IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11620 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HANIF YAKUB CHHIPA

Versus

STATE OF GUJARAT

Appearance:

MR MH BAREJIA for Petitioner

MR SAMIR DAVE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/02/2001

ORAL JUDGEMENT

#. Challenge has been made by petitioner in this petition who is detained under the Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as `Act') as a `bootlegger and dangerous person' to the order of the District Magistrate, Bharuch, dated

13.8.1999 passed in exercise of powers conferred under Section 3(2) of the Act.

#. The learned counsel for the respondents prays for short adjournment to file reply to the special civil application but I do not find any justification in this prayer made by learned counsel for the respondents. This matter was admitted on 15.11.2000. Rule was made returnable on 6.12.2000 and before 6.12.2000 probably, the respondents would have been served. As this service of notice was by direct service process, it was not accepted to be sufficient and on 8.1.2001 order is made to issue fresh notice to respondents returnable on 15.1.2001. It is not in dispute that before 15.1.2001, the respondents have been served with the notice of Rule but they have not cared to file reply to the special civil application. These are the detention matters in which it is expected from the respondents to file reply expeditiously where they so desire to file. This detention is of 13th August, 1999 and the mater has come up after more than four months from the date of detention and this indulgence as what it is prayed for if it is granted to the respondents, then it will affect the personal liberty of the detenu. It is a case where more than sufficient time was available with the respondents if they so desired, to file reply to the special civil application.

#. This matter also exhibits clear example that the detention order of the petitioner is nothing but only a statistical data and deliberately, lacunas have been left out in the order so that he may get himself released by this court.

#. The learned counsel for the petitioner raised manifold contentions challenging the order impugned in this special civil application of the detaining authority, but as this matter deserves acceptance only on one ground, no need to refer, discuss and give finding on all other contentions. This course is adopted otherwise to save precious and valuable time of the court which is facing serious problem of overcoming pending matters.

#. It is contended that last case was registered against the petitioner on 28.6.99. In that criminal case, on the very day, the petitioner was released on bail by the court. This detention order has been made on 13th August, 1999. So there is undue and unexplained delay in passing thereof. Reply to the special civil application has not been filed and the averments made in the special

civil application stand uncontroverted and the same are to be taken to be correct. It is true that merely on the ground of delay in passing of the detention order, the court may not release the detenu but if such a ground has been taken then the burden lies on the respondents to explain this delay and in this case, no explanation whatsoever has been furnished by respondents either by filing reply or by placing before the court the record for perusal.

#. Mr.Samir Dave, on the basis of record of this matter, contended that the statements of privileged witnesses were recorded on 4.7.99 and it took some time for verification etc.. So delay may not be taken to be fatal to this case. I do not agree with this contention for the reason that if it would have really been a case of bonafide exercise of powers, I fail to understand why the respondent-authority has waited to pass the detention order. It is not in dispute that so far as other privileged witnesses were concerned, their statements were recorded on 15.6.99.

#. This delay remains unexplained and as a result of which, this petition succeeds and the same is allowed and the order of detention of the petitioner dated 13.8.1999 is quashed and set aside. The petitioner Hanif Yakub Chhipa, the detenu, at present at Jamnagar District Jail, Jamnagar, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. No order as to costs.

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(sunil)